

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTONIO GARCIA-CHAVEZ,

Defendant.

Case No. 2:08-cr-00239-LDG (PAL)
Case No. 2:13-cv-01714-LDG

ORDER

The defendant, Antonio Garcia-Chavez, has filed a motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence by a person in federal custody (#72), and an application for appointment of counsel (#73). The Court has determined, for several reasons, that the defendant is not entitled to any relief and the §2255 motion must be dismissed. First, the motion is untimely. The defendant was sentenced June 26, 2009, and did not appeal. He filed the instant motion on September 18, 2013, and does not provide a legitimate reason for failing to file the motion within the requisite one-year period. See 28 U.S.C. §2255(f). Second, except for the signature and date, the motion is a photocopy of a §2255 motion that defendant filed in August 2010. The Court denied that first motion on the merits, and the defendant did not appeal that ruling. Third, although the

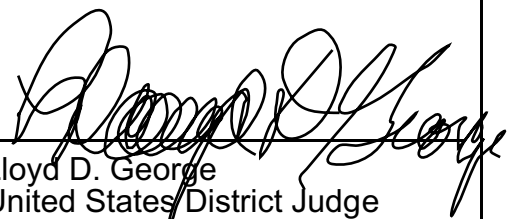
1 instant motion is the defendant's second §2255 motion, he has not obtained the requisite
2 certification of the court of appeals. See 28 U.S.C. §2255(h). Therefore,

3 THE COURT **ORDERS** that Defendant's Motion Under 28 U.S.C. §2255 to vacate,
4 set aside, or correct sentence by a person in federal custody (#72) is DENIED;

5 THE COURT FURTHER **ORDERS** that Defendant's Motion for Appointment of
6 Counsel (#73) is DENIED;

7 THE COURT FURTHER **DENIES** a Certificate of Appealability for the above stated
8 reasons.

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10 DATED this 8 day of April, 2014.

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13 Lloyd D. George
14 United States District Judge
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